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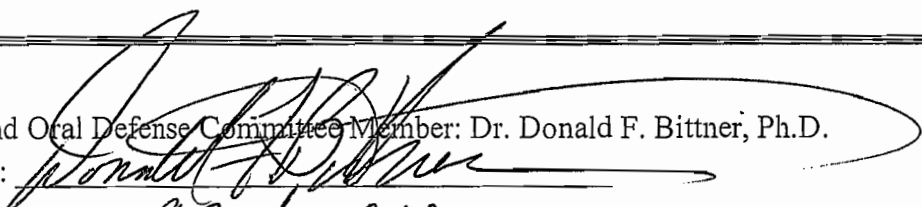
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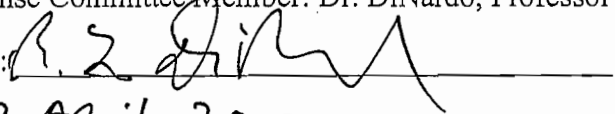
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Executive Summary

Title: Privatization of Deadly Force: The Impact of Security Contractors on the Modern Battlefield

Author: Major Timothy R. Powledge, United States Marine Corps

Thesis: In war, the use of force is an inherently governmental function that must be the responsibility of a legitimate military commander; therefore, private military companies (PMC) should not perform functions that use force on behalf of the state.

Discussion: PMCs have been used to support contingency operations in the past, but the current operations in Iraq and Afghanistan are using tens of thousands of security contractors at a cost of billions of dollars. The effects of these PMC on all levels of war can be clearly seen in the current operations occurring in the United States Central Command Area of Operations. The scope and complexity of security contracting is reflected in a January 2010 report by the Congressional Budget Office stating that the U.S. Government spend between \$6 to \$10 billion dollars on security contracting from 2003 to 2007, with between 25,000 to 30,000 security contractor personnel in Iraq in 2008.

The major problem with security contractors executing actions on the battlefield is the inability of operational military commanders to control their actions as part of the total force and hold them accountable for misconduct. Numerous reports from Iraq and Afghanistan indicated that the indigenous people do not distinguish between private security personnel and U.S. government personnel. Therefore, what a contractor does on the battlefield, is done by the United States in the eyes of the people involved. The solution is to eliminate the need for private security contractors in environments where they are likely to use force. In these situations, security and the use of deadly force must be carried out by recognized government personnel who are accountable for their actions and have a stake in the overall success of the mission.

Conclusion: The surge of private security contractors after the Cold War has largely been, and continues to be, ignored by the military leadership. Until the issue of use of deadly force by private security contractors in contingency operations is resolved, operational commanders must have the ability to hold them accountable.

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Preface

This work is a result of my observation of trends in the current operating environment in Iraq and Afghanistan. I became interested in the topic of privatization of battlefield functions after serving two seven-month tours as a company commander in Iraq. During these deployments it became apparent that the limited size of and training opportunities for our current military forces will require the support of private contractors.

This paper will briefly recount the significant actions from recent operations in the CENTCOM AOR to highlight the operational challenges associated with allowing private military companies to operate alongside U.S. military forces. Its focus will be on the role and impact of private military companies that are performing inherently governmental functions during armed conflict. Hence, it will discuss in detail the scope and implications of private companies executing U.S. foreign policy and the effect of their actions on the operational military commander.

I will discuss the legal and ethical aspects of privatizing battlefield functions only as required to illustrate their potential challenges. This paper is not intended to address the moral issues associated with security contractors or the alleged profiteering during the military operations in Iraq and Afghanistan.

Writing this paper would not have been possible without the unwavering support of my wife, Lori, and my daughters, Lisa and Cora. It is also the culmination of learning from the faculty of the Command and Staff College and from my peers.

INTRODUCTION

In war, the use of force is an inherently governmental function that must be the responsibility of a legitimate military commander; therefore, private military companies should not perform functions that use force on behalf of the state. There are many useful functions that private military companies (PMCs) can perform in support of military contingency operations, but the use of deadly force and coercion must remain functions performed by duly authorized agencies of the government. The most basic government function is to provide for the common defense of its people and the employment of military forces can mean the termination or survival of a state.¹ This is why the decision to apply and the ensuing application of military force must be a monopoly of the state.² Many would argue that the nation-state hold on military power is broken. PMCs are contracted to provide security in environment where they are likely to use deadly force in the execution of their duties or in self-defense. The use of deadly force on behalf of a nation-state, whither by uniformed military personnel or by contract personnel, is a governmental function that must serve the interest of the state and not private business.

PMCs have been used to support contingency operations in the past, but the current operations in Iraq and Afghanistan are using tens of thousands of security contractors at a cost of billions of dollars.³ The effects of these PMC on all levels of war can be clearly seen in the current operations occurring in the United States Central Command Area of Operations (USCENTCOM AO). The scope and complexity of security contracting is reflected in a report by the Congressional Budget Office stating that the U.S. Government spend between \$6 to \$10 billion dollars on security contracting from 2003 to 2007, with between 25,000 to 30,000 security contractors in Iraq in 2008. Those contractors worked for the U.S. government, the Iraqi

government, other contractors, and other customers.⁴ For example, in Afghanistan in June 2009 contractors made up 57% of DOD's combined uniformed and contractor personnel workforce in that country.⁵ This means that over half of the effort the United States is putting into its foreign policy goals in Afghanistan is in the hand of profit-driven private companies.

The use of PMCs as security contractors has raised issues of accountability and transparency due to a several highly publicized incidents in Iraq and Afghanistan.⁶ The impact that some of these incidents has gone far beyond the battlefield or the country in which they were committed. The actions and conduct of private military companies working on behalf of the U.S. government has impact at the strategic level and has resulted in an urgent review of law and policy on the use of force by contractors.⁷ In the middle of this chaos are the operational and tactical military commanders, who must accomplish their assigned mission and are often held accountable for the action of PMCs operating in their area of operations (AO) but are not under his control.

BACKGROUND

There are four important factors that led to the U.S. government use of, and possible over reliance on, security contractors. They are (1) the U.S. government's desire to outsource government functions, (2) the drawdown of the U.S. military after the Cold War, (3) the rise of Private Military Companies inside the United States, and (4) the "inherently government" loophole. These four factors, combined with the needs of the U.S. government during contingency operations in the CENTCOM AO, created many increased challenges for the operational commander.

First, in 1947, the U.S. government enacted two pieces of legislation that dramatically increased the role of contractors in the American military establishment. The National Security

Act of 1947 created the Department of Defense. The new department and its vast budget set the conditions for expanding the military structure and the scope of contracting.⁸ The second was the product of guidance from President Eisenhower to purchase as much as possible from private sources.⁹ This eventually gave birth to the 1966 Office of Management and Budget (OMB) Circular Number A-76, whose basic aim was to put activities currently performed by government out for public-private competition.¹⁰ These laws, mixed with a large budget and the enthusiasm of the free market, combined to create the American military-industrial complex. Since then, the Department of Defense (DOD) has been outsourcing in the name of cost efficiency and expedience.

These are no longer relegated to their traditional role of logistical support functions; PMCs now operate on the battlefield executing combat function once thought to be only the domain of uniformed military personnel. FM 3-100.21, Contractors on the Battlefield, states:

When considering contractor support, it should be understood that **it is more than just logistics; it spans the spectrum of combat support (CS) and combat service support (CSS) functions.** Contracted Support often includes traditional goods and services support, but may include interpreter, communications, infrastructure, and other non-logistic-related support. It also has applicability to the full range of Army operations, to include offense, defense, stability, and support within all types of military actions from small-scale contingencies to major theater of wars.¹¹

The operations being conducted in Iraq and Afghanistan are augmented by contractors across the warfighting functions. The number of security contractors on the battlefield reflects contemporary conflict. As Paul Verkuil emphasizes, in counter-insurgency operations it is hard to know where the battlefield begins and ends and also because the military does not have enough personnel in uniform to function.¹² The DOD reports that in June of 2009 contractors composed 46% of the DOD's total workforce in the Central Command Area of Responsibility (CENTCOM AOR). There were 243,735 total contract personnel serving along with 280,700

uniformed military service members. Of these, 18,323 were private security contractors executing armed security missions in CENTCOM.¹³ To put these numbers in historical perspective, the United States is using two and half times more contractors supporting the War on Terror in the CENTCOM AOR than any other major U.S. military operation in history.¹⁴

Second, the downsizing of the U.S. military after the fall of the Soviet Union had a profound impact on the Department of Defense's relationship with contractors. At the close of the Cold War, the nation's use of contractors increased significantly. As Thomas Adams wrote in *Parameters* (1999), "Since the end of the Cold War, the Defense Department has cut more than 700,000 active-duty troops from the ranks. To preserve as many combat positions as possible, the services have turned over many support jobs to Defense civilians and private contractors."¹⁵ In the name of increased efficiency and more responsible government spending, the DOD cut logistical and support functions from the standing military establishment and decided that these services would be provided by the private sector as needed.¹⁶ Jeremy Scahill writes, "...during Dick Cheney's time as Defense secretary (March 1989 to January 1993), [he] reduced the number of troops from 2.2 million to 1.6 million and commissioned a study on how the military could privatize the majority of support services."¹⁷ The prevailing thought in U.S. government was that contracting gave the DOD quick access to new technology and a world-wide talent pool.¹⁸ The DOD has streamlined itself to the bare-minimum of uniformed personnel. When a contingency operation comes up, the limited personnel quickly get overwhelmed and turn to the contract work force to meet the increased demand. America's "all volunteer" force is too small to operate effectively and contractors must fill the gaps.

The third factor is the development and expansion of PMC's inside the United States. After the military downsizing at the end of the Cold War, two key things happened that

facilitated the rise of the private military company: (1) a flood of well trained personnel became available, i.e. left the military, and (2) instability increased and conflicts arose around the world which required a U.S. government response.¹⁹ The personnel cuts in the U.S. military of the early 1990's thus placed a talent pool into the work force with unique talents. These skills were quickly put to good use around the globe in the wake of the fall of the Soviet Union. Small, but frequent, conflicts around the world required U.S. military intervention and it became the norm to send PMC personnel to do traditionally military work to keep troop deployment numbers low.²⁰

The fourth factor that has led the U.S. government to use PMC's in contingency operations is the complex issue of "inherently governmental" functions. In 1966, under President Johnson, the Office of Management and Budget issued OMB Circular Number A-76 that defines an inherently governmental function as follows: "... an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government."²¹ The roles that contractors are filling can easily put them at odds with this definition. For example, the Army investigation of the Abu Ghraib prisoner abuse scandal in Iraq found that contract personnel from two different companies were suspected of being involved with abuse during interrogations.²² Interrogations are intended to coerce a prisoner into divulging information. This type of action involves decisions that "exercise substantial discretion in applying government authority" and require strict adherence to orders and accountability by appropriate authority. Legal scholar Paul R. Verkuil, however wrote, "When private contractor are accused of acts of torture, there is a failure of public

responsibility. Whatever else it is, torture is surely a governmental “function” that cannot be privatized.”²³

Regarding the use of force in matters that are inherently governmental, OMB Circular A-76 states, “an agency shall consider the following to avoid transferring inherently governmental authority to a contractor...whether the provider is more likely to use force, especially deadly force, and the degree to which the provider may have to exercise force in public or relatively uncontrolled areas.”²⁴ This statement gives clear guidance that if a function is likely to involve the use of deadly force, then the activity would be inherently governmental. However, the next sentence states, “These policies do not prohibit contracting for guard services, convoy security services, pass and identification services, plant protection services, or the operation of prison or detention facilities, without regard to whether the providers of these services are armed or unarmed.”²⁵ This statement is the piece of U.S. policy, the loophole, that allows contractors to serve in Iraq and Afghanistan in security roles, and by some of their actions contributed to strategic setbacks.

The wide interpretation of U.S. policy on inherently governmental functions is a controversial topic in light of situations that have arisen out of U.S. operations in Central Command AO. Jody Freeman and Martha Minow opined, “The inherently governmental designation used [for] over half a century has proven woefully inadequate, both conceptually and in practice.”²⁶ The complexity of the issue caused the US government to seek a legal interpretation from one of its most trusted private think-tanks. In 2005 the DOD enlisted the RAND Corporation to assist in determining what can be outsourced and what could not.²⁷ RAND determined that “military essential” positions and those that involve “discretionary application of lawful coercion or violence” are inherently governmental.²⁸ Legal scholar Paul R.

Verkuil, supports such a view, but also asserts, “RAND is legally correct...but there is a disconnect between rules and reality”. Contractors like Blackwater and Titan are in positions to use violence or employ lawful coercion in the execution of their contracted duties.

The strategic implication of PMCs using force on behalf of U.S. foreign policy has reached the attention of the highest levels of government. President Barak Obama issued a statement in March 2009 stating, “The line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined.”²⁹ Congress has also enacted several pieces of legislation to address this problem. Specifically, the National Defense Authorization Act for FY2009, passed under President George W. Bush, requires the Office of Management and Budget (OMB) to develop a single and consistent definition of inherently governmental functions.³⁰ This new definition was due back to Congress on October 14, 2009. As of January 2010, OMB has not yet responded and a congressionally directed moratorium on new public/private contraction under OMB Circular A-76 is still in effect.³¹ In other words, at the time of writing, the issue of what is inherently governmental has not been resolved.

THE PROBLEM

The use of PMCs has become an integrated part of how the joint force plans to operate. US Army FM 3-100.21, *Contractors on the Battlefield*, directly addresses this situation: “to reach a minimum of required levels of support, deployed military forces will often have to be significantly augmented with contractor support.”³² The implication of PMCs operating with military forces has a significant impact for the United States Department of Defense at the operational and tactical levels of war. Deciding what capabilities will be contracted and what will be kept public is a strategic matter but quickly becomes a concern for the combatant

commander where the strategic must link with the tactical to produce the desired result. Here at the operational level of war, the commander on the ground must clearly delineate the roles and responsibilities the contractors are going to fill. Command and control is the most important factor in the melding of the military force with the contact force. The presence of contractors will be a necessary reality for the foreseeable future so operational control of PMC personnel must rest with the operational commander.

The problem this situation creates is best described by Tom Ricks in *Fiasco* (2006) when he wrote about the situation in Iraq: "The contractor was hired to protect the principal. He had no stake in pacifying the county. Therefore, they often ran Iraqis off the roads, reconned by fire, and generally treated locals as expendable. Yet the Iraqis saw them as acting under American authority. [Security contractors are] an unaccountable, deadly force and they (Iraqis) have no recourse."³³ Contractors interrogate prisoners, conduct forensic exploitation of sensitive locations, pilot unmanned aerial vehicles (UAV), and provide physical security for diplomats. In the past, these types of activities were executed by uniformed military personnel. This is significant, because serving in these capacities puts the PMC employee in contact with the population and also makes the contractor a legitimate military target. This leads to question about their legal rights and ability to protect themselves, accountability for violations of the laws of war, and control and direction of their actions on the battlefield by a military commander. In both Iraq and Afghanistan, PMCs are seen by local populations, the US public, and the international community as part of the U.S. government effort. No distinctions are drawn between the actions of the PMC and the uniformed military or other U.S. government agencies. In reality, the operational military commander must often bear the responsibility for the actions of security contractor employees not under his command.

THE CASE: Fallujah 2004

There are numerous examples from recent operations in Afghanistan and Iraq that could be used to illustrate the challenges private security contractors create for the military commander. However, the case of Fallujah, Iraq in March, 2004 is one of the most complete and instructive cases to clearly highlight the problem. The incident, usually referred to as “the Fallujah-Blackwater ambush” or the “Brooklyn Bridge lynching”, on March 31, 2004 and involved four private security contractors from the U.S. based PMC, BlackwaterUSA. BlackwaterUSA, now called Xe, got its start in 1996 as a training provider for occurred special operations forces and then expanded into a full service PMC.³⁴ By the time the U.S. invaded Iraq, BlackwaterUSA had been working on government contracts for several agencies and had positioned itself for more work in Iraq.³⁵ The occupation of Iraq became a “gold rush” for private military companies that could provide security services and BlackwaterUSA was often the company of choice.³⁶ In this, it worked directly for the U.S. government, as well as, for other contractors providing security services in support of their work. All of this came together at Fallujah on March 31, 2004.

On the morning of March 31, 2004, four security contractors from BlackwaterUSA were conducting a route reconnaissance for a supply convoy from Kellogg Brown & Root (KBR) scheduled to pass through Fallujah on its way west the following day.³⁷ To be clear, the BlackwaterUSA contractors were sub-contractors hired by KBR to protect a routine logistic convoy passing through the southern leg of the Sunni Triangle. The four security contractors had spent the previous night aboard Camp Fallujah with Marines from the 1st Marine Regiment but had not made any coordination or shared information with the marines.³⁸ On March 24 the 1st Marine Regiment had taken responsibility for the Fallujah area from the U.S. Army’s 82nd

Airborne Division; only one week before the incident. Tensions had been running high in and around Fallujah with 26 attacks in the month of March and at least nine Marines had been killed since the transfer of authority from the 82nd.³⁹ For the past week the Marines had been deliberately probing Fallujah to draw out insurgents and prevent the city from becoming a safe haven for foreign fighters, Al Qaeda, and former regime loyalist.⁴⁰ The situation was hostile and deteriorating rapidly, so the Marines attempted to engage the local police force in Fallujah in an attempt to conduct combined operations. The Marines wanted to get the Iraqis involved with security and form a partnership intended on stabilizing the city. However, the Marines were viewed as occupiers and could not form relationships with local residences. The Marines then decided to patrol the edges of the city during these negotiations in an effort to reduce tensions.⁴¹

The four BlackwaterUSA security contractors were unaware of the situation between the Marines, the Fallujah police, and the Fallujah population. At approximately 0930L on March 31, the four contractors departed Camp Fallujah and proceeded to bypass a Marine checkpoint to enter the city.⁴² The contractors were described as lightly armed CIA looking Americans driving thin-skinned pickup trucks.⁴³ They drove west down Highway 10 into a carefully prepared ambush in the center of downtown Fallujah where they were shot, burned, and dismembered.⁴⁴ A mob of Iraqis formed and drug the bodies to the Brooklyn Bridge where they were hung from the girders. The trucks the contractors were driving were set ablaze, sending a tall column of black smoke into the air.⁴⁵

The Marine Headquarters heard about the situation in downtown Fallujah through CNN.⁴⁶ There was disbelief and confusion over what had happened. To them, there were not supposed to be any coalition forces in downtown Fallujah because of the ongoing negotiations. After some checking, the Marines learned that the bodies hanging from the bridge were those of

the four security contractors and the higher headquarters in Baghdad wanted to know what the Marines were going to do about it. Meanwhile, the news media broadcasted images of the charred remains of Americans being hung from a bridge while an angry mob chanted anti-American slogans.⁴⁷

The situation was being compared to Mogadishu, Somalia, where in 1993 U.S. Army Rangers were killed and drug through the streets by an angry mob. The Marine commanders in the area thought the attack on the contractors was an attempt by the insurgents to draw the U.S. into overreacting. Hence, they wanted to take a measured approach and conduct intelligence gathering operations followed by small-scale precision raids to catch or kill those responsible. The highest levels of the U.S. government in Washington DC saw it differently; they wanted a swift and tough retaliatory raid.⁴⁸ On April 5, 2005, at the direction of the President of the United States, the Marines embarked on Operation Vigilant Resolve in retribution for the brutal killing of the contractors. That operation would end on April 26 with LtGen James T. Conway, the Commanding General of the 1st Marine Expeditionary Force, pulling the Marines out of Fallujah and turning the city over to the Fallujah Brigade.

The uncoordinated actions of four security contractors doing their own thing had an incredible impact on the course of the war in Iraq.⁴⁹ The indecisive outcome of Vigilant Resolve appeared to many Iraqis and sympathetic foreigners as an insurgent victory. This emboldened insurgent elements and served to increase recruiting. Fallujah became a stronghold of insurgent resistance and a symbol of “local” victory against the “occupying” U.S. forces. Tensions in Fallujah would simmer for several months until November, 2004 when the Marines went back into and finally took control of the city.⁵⁰ The 31 March 2004 killing of four security contractors in Fallujah thus triggered a series of events that will be remembered in Marine Corps battle

history but also had operational and strategic effect. The political attention and pressure that this incident created was the catalyst for a division-sized offensive operation that was only second in scope and size to the invasion in 2003.

SOLUTION

The art of campaign design is intended to link tactical engagements together, making them part of an operational design intended to achieve strategic objectives. Without these links to an overarching framework, tactical engagements can become pointless acts of violence with the potential to hinder the larger effort.⁵¹ In conventional operations, the Marine Corps refers to this as the “Single Battle Concept.”⁵² In the single battle concept, the commander attempts to synchronize actions across all line and areas of operation to achieve stated objectives. Every action by all units involved in an operation is coordinated and linked in an effort to achieve common goals. The single battle concept is intended to create unity of effort across the entire force and enable subordinate unit commanders to take initiative and make decisions independently that will support success of the overall mission. Allan Mallinson illustrates the importance of campaign design when he wrote, “... without operational art, war becomes a set of disconnected engagements with relative attrition the only measure of success or failure.”⁵³ It is in this single battle concept that the use of private security contractors must be carefully managed by the military commander. Their actions must not be allowed to become isolated acts; if they are going to operate on the battlefield, they must be integrated and linked into the overarching strategic aims and tied to the overall effort.

The recent misconduct and abuses have earned the security contractor a negative connotation. PMCs are associated with being unscrupulous, ruthless, and self-serving. There is no doubt that some contractors are involved in illicit activities and have earned this reputation

through proven misconduct.⁵⁴ However, the reality is that the system in which the contractor operates is defined by the U.S. government. That mechanism which defines the government-contractor relationship is dysfunctional at both ends. Reviewing the current situation leads to four significant conclusions: (1) the term “inherently governmental” has crept into a new meaning that is not clearly defined and is not understood, (2) the government dependency on security contractors was foreseen but not prepared for, (3) military commanders must assume command and control of private security contractors in the battlespace in order to ensure unity of effort and accountability, and (4) until such time as Congress defines what is inherently governmental and a clear method for holding security contractors accountable is identified by DOD, operational commanders must make every effort to reduce the number of PMC personnel operating in their AO and integrate PMC personnel into their operations to insure unity of effort. The following paragraphs will explain each of these four significant conclusions in detail.

(1) When the U.S. sends uniformed military forces into a contingency operation, it is putting one of the four forms of national power into action for the best interest of the American people. The current practices being used to define what contractor can and cannot do must be reexamined. General Anthony Zinni, former commander-in-chief of U.S. Central Command, said, “If I had to revamp one thing, I would start with what should be contracted and what should not.”⁵⁵

Using the Fallujah-Blackwater case as an example, it is evident that convoy security should be declared an “inherently governmental” task and should reside completely under the control of the operational military commander. PMCs are private companies that are not accountable to the public. It is understood that they are “for profit” ventures that are ultimately concerned with increasing their value. This clearly led to a conflict of interest in Fallujah with

the security contractor operating independently of the military command structure. If the security contractor had been operating under the military command structure, they would have been read into the dangers of operating inside Fallujah in the spring of 2004 and would have never been allowed into the city. The fact that these BlackwaterUSA contractors were only accountable to the company for whom they provided protection led to rushed planning and a complete lack of situational awareness that ultimately cost them their lives: this in turn had effects at all levels of war. The use of national military power and supporting economic resources are at the foundation of function of the state. These are the bedrock functions that the state is designed to execute and therefore they can only be “inherently governmental” functions.

(2) In January of 2003 the U.S. Army published FM 3-100.21, *Contractors on the Battlefield*, in an attempt to bring the issue of contingency contracting into focus. It states, “the increasingly hi-tech nature of our equipment and rapid deployment requirements have significantly increased the need to properly integrate contractor support into all military operations.”⁵⁶ This publication, published several months prior to operations in Iraq and now over seven years old, clearly grasps the significant role that contractors play in DOD’s total force. The truth is that DOD is dependent on contractors for all forms of support, including physical security. The force structure was not stood up to provide physical security personnel necessary for operations in the CENTCOM AOR environment from 2001 to present. DOD, failing to have the necessary military personnel deployed to provide physical security for logistic convoys, diplomats, etc., did the only thing it could: It contracted such work out to the private sector. When BlackwaterUSA was contracted by the U.S. Department of State to provide security for the Coalition Provisional Authority in Iraq, no identified method existed for holding these contractors accountable for their actions in country.⁵⁷ Nowhere is there any evidence that the

U.S. government took steps to define the legal structure that would cover the private security contractor or hold them accountable for misconduct.

(3) During complex contingency operations, such as the ones being conducted in Iraq and Afghanistan, there can be no rouge operators. Every element of national power must be synchronized to support common goal across all lines of operation. Unity of command is one of the time tested and undisputable principles of war because without it, victory will be at least delayed and possibly unattainable. Contactors, as part of the total force, must be folded into the common effort toward the military objectives of the force they are supporting. Military commanders must have operational control and authority over contactors that are operating in the battlespace. This does not imply that military commander can randomly task contractors to perform any function at any time. Contactors function under an agreement called a statement of work. The statement of work defines the requirement that a contractor is to provide and the associated terms and conditions thereof. The military commander must have the ability to influence the conduct and operational employment of contactors and be able to hold them accountable for misconduct. These contractors represent the United States Government and are part of the effort to implement foreign policy.

The Fallujah-Blackwater ambush is not the only pertinent example of private security contractor's misconduct having strategic impact on military operations in support of foreign policy. The Abu Ghraib prison scandal and the Blackwater killings of 17 civilian in Baghdad's Nisoor Square, the two other most commonly known cases in which contactors were involved in misconduct, caused major problems for military commanders. The Abu Ghraib incident shook the coalition in Iraq to its foundation and effected world opinion.⁵⁸ It is common knowledge that CACI International and Titan International contact employees were intimately involved in the

torture and abuse that occurred there. The 2007 Nisoor Square incident in Baghdad caused trouble for military commanders in the form of political backlash from Iraqi political leaders.⁵⁹ A consensus of the civilian population in Baghdad immediately arose: US government agents murdered local civilians in their own neighborhoods. This served to shatter any trust or sense of unity between coalition forces and the Baghdad population. This became a significant setback caused by contractors in a counter-insurgency operation where U.S. forces were attempting to win the “hearts and minds” of the population. These examples clearly show the effect that contractor actions have on U.S. military operations, yet military commanders do not have the authority to discipline or charge contractors for misconduct.

(4) The operational commander must take PMCs into consideration for their operations. The limited legal and operational structure under which security contractors operate does not relieve the military commander on the ground of his/her responsibility to control their AO and those who operate in it. The operational commander should seek to limit the scope and number of PMC personnel operating in their AO. If security contractors are necessary, they should be host-nation companies that are clearly accountable to the laws of the host-nation. The operational commander should consider placing a liaison officer with the PMC or at least maintaining an open communication channel for coordination prior to missions and emergency situations during missions. PMCs under contract by the U.S. government should not be allowed to operate in situations where they are likely to employ deadly force.

Until U.S. law appropriately accounts for PMCs using deadly force and has effective methods in place to ensure accountability and unity of effort, the operational commander should be allotted the necessary uniformed military forces to execute the mission. One method of filling the convoy security or personal security mission during contingency operations would be to

reallocate reserve units to this task. A reserve unit could very quickly be trained to provide security functions on the battlefield. They are uniformed military and subject to the UCMJ. They would be under the command and control of the operational commander and could be apportioned out to DOD contractors that are providing logistical support or to U.S. government interagency partners operating in the AO as part of the same over all foreign policy effort. If necessary, these reservists could be allowed to operate non-standard vehicles and wear non-standard uniforms to better facilitate the image of interagency partners. This type of operational flexibility is appropriate and necessary in today's complex operating environment.

However, there may be situations where PMCs must operate alongside military forces. In these cases, it is critical that the PMC personnel be used in an economy of force role as far from danger, and the potential to use deadly force, as possible. Operations in Iraq in 2004/2005 provide an example of how this should be done. Baghdad was considered by most to be the center of gravity for the political stability of Iraq. Therefore, using profit-driven PMCs to run dozens of security missions through the city daily was not a prudent choice. The PMC personnel cared nothing for the overall mission of pacification or for the people; their only concern was to deliver their "principle" safely to their destination.⁶⁰ Military units, with an understanding of the complete mission and commander's intent, should have performed this important function in such a sensitive, if not crucial, environment. The local population that the PMC personnel were endangering and offending did not distinguish between the PMC personnel and the U.S. government personnel; to them, they were one in the same. The PMC personnel, if they had to be used at all, should have been used in other and less sensitive, locations. For example, the route from Kuwait to Basra was far less politically sensitive and threatening with a much lower

chance of employing deadly force. This would have freed up some military convoy security elements and made them available for work in the Iraqi capital.

Contractors, including private military companies, have been the “shadow army” of the U.S. total force for several decades. The Capstone Concept for Joint Operations, published by DOD in January 2009, is the Chairman of the Joint Chiefs of Staff’s vision of how the joint force will operate during the next 10 to 15 years. This document, provided by the most senior military member in the national defense structure, covers the subject of contractors on the 29th page in one brief sentence. “It will also require assessing the proper role and management of contractors and other civilians within the force.”⁶¹ In this 40 page document that is intended to shape the understanding and thinking of how the joint force will be employed, the attention given to the subject of contractors is indeed brief. This is shocking considering that in June of 2009 18% of the 243,735 contractors in the CENTCOM AO were security contractors from various PMCs.⁶² The word contractor does not appear in Marine Corps Vision and Strategy 2025. This must be by design. The use of contractors in contingency operations serves to ease political tensions about the size of troop deployments. The use of contractors keeps the numbers low and more palatable or unseen all together. Contractors can be used to affect foreign policy without deploying troops and allows the American hand to remain hidden in certain sensitive situations. If this is intension of the U.S. government, PMCs should not be employed alongside military units during contingency operations.

Any battlefield function that involves the use of force or lawful coercion must be the role of uniformed military functions as part of the U.S. government. If a unit operating on the battlefield is likely to use force on behalf of the U.S. government, it must be an official government agent doing it. For example, convoy security will be performed by uniformed

military units under an appropriate military commander for the area the convoys are in support of. If coordination, use of force, rules of engagement, and accountability issues go out the window, everyone knows who is in charge and to whom they are accountable. This also takes the contractor out of situations where they are likely to use force and they are not performing functions that make them a legitimate military target for the opposition. The contractor and uniformed military member are no longer in competition; instead, they function as part of the total force working in coordination toward common goals.

CONCLUSION

Hiring contractors to support military operations is an ancient concept that has grown into a large component of the contemporary operating environment. Machiavelli cautioned against the employment of mercenaries when he wrote, "They (mercenaries) are disunited, ambitious, without discipline, disloyal, overbearing among friends, cowardly among enemies; there is no fear of God, no loyalty to men."⁶³ This caution, from one of the founders of modern strategy, rings as true today for PMCs performing inherently governmental tasks as mercenaries were in the Renaissance era of his day.

The implications associated with the surge of private security contractors after the Cold War has largely been, and continues to be, ignored by the military leadership. The necessity to employ large numbers of contractors across the warfighting functions during recent contingency operations has outpaced DOD's ability to manage the situation effectively. The scope, size of contracting budgets, and the speed at which these events occurred, has resulted in PMCs moving about the area of operations uncoordinated and unaccountable for misconduct. At the foundation of this problem is the unclear and inconsistent interpretation of what functions must be performed by government personnel and what can be privatized. The issue of defining what is

inherently governmental is as old as the republic itself and Congress continues to wait for a clear and concise definition from the Office of Management and Budget.⁶⁴ Until the issue of use of deadly force in a contingency operation is resolved, operational commanders must remember the lessons learned from Iraq in Fallujah and the operational impact that armed PMC personnel had there.

The Fallujah-Blackwater ambush of 2004 clearly shows the operational impact that PMC personnel can have at all three levels of war. The uncoordinated actions of these four security contractors changed the course of the occupation in Iraq, although, the operational commanders still had to carry out the mission of pacifying the city of Fallujah. Once images of Americans being mutilated and hung from a bridge appeared on the evening news, the methods and timetable for accomplishing this task were drastically altered by the highest levels of the U.S. government. The lesson is clear: the vast majority of people do not distinguish between a security contractor and a uniformed military member. They are both perceived as part of the American foreign policy effort and representatives of the U.S. government. The military commanders were not in a position to be accountable for the contractor's actions, but ultimately had to adjust and adapt to the consequences of the security contractor's actions.

These factors in recent operations, has lead to the realization that PMCs are part of the total force and must be held accountable for all aspects of their battlefield operations. Operational military commanders must include PMC actions into the planning for all types of military operations. Whether employed by the U.S. government, the host-nation government, or a private party, the U.S. joint force should be prepared to command and control private security contractors in the operating environment. Whenever possible, military commanders should seek to limit the exposure of security contractors to the population the U.S. government is trying to

influence. PMC personnel should be used sparingly, if at all, in an economy of force role on supporting effort tasks as far as possible from key operational areas. The use of security contractors in Fallujah and Baghdad during the U.S. occupation of Iraq lead to several incidents of misconduct that significantly impacted U.S. operations militarily and politically. The operational military commander must always remember that the PMC is primarily driven by profit and not necessarily by a sense of duty, country, or patriotism. This fundamental difference is a fault line that can have massive impact on operations.

APPENDIX A

Timeline of Significant Events

| | |
|-------------------------|--|
| Oct 7, 2001 | Coalition Forces initiate Operation Enduring Freedom (Afghanistan) |
| Mar 20, 2003 | Coalition Forces initiate Operation Iraqi Freedom |
| May, 2003 | BlackwaterUSA contracted by DOD to protect CPA |
| Jan 16, 2004 | Abu Ghraib prison scandal breaks in international media |
| Mar 31, 2004 | Blackwater contractors ambushed in Fallujah |
| Apr 4- 1May 2004 | First Battle of Fallujah |
| Nov 7-16 2004 | Second Battle of Fallujah |
| Sept 16, 2007 | Blackwater Nisoor Square shooting incident in Baghdad, Iraq |
| Oct 14, 2008 | National Defense Authorization Act for FY 2009 signed into law |
| Jan 15, 2009 | USJFCOM published the Capstone Concept for Joint Operation |

APPENDIX B

List of Acronyms

| | |
|---------|--|
| AO | Area of Operations |
| AOR | Area of Responsibility |
| CCJO | Capstone Concept for Joint Operations |
| CENTCOM | (or USCENTCOM) United States Central Command |
| CIA | Central Intelligence Agency |
| DOD | Department of Defense |
| KBR | Kellogg, Brown, and Root |
| OMB | Office of Management and Budget |
| PMC | Private Military Company |
| UAV | Unmanned Ariel Vehicle |

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that effected military operations there. *Corporate Warriors: The Rise of the Privatized Military Industry* provides a broad history of the use mercenaries through history and examines how these non-state actors have influenced the domestic and foreign policy of nation-states; this book gave useful historical perspective but was focused on how nation-states employed foreign mercenaries. However, *Corporate Warriors* was published in 2003, hence it provided little useful information on current contingency operations in the CENTCOM AOR. Most other secondary sources listed were consulted for historical perspective on the use of PMCs or security contractors by the US government but were of little use for this topic as they are older and do not reflect the complexities of the current situation.

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